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17 Attorneys for Defendant
18 David Yamasaki

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 SOUTHERN DIVISION

22 Courthouse News Service,
23 Plaintiff,

24 v.

25 David Yamasaki, in his official
26 capacity as Court Executive
27 Officer/Clerk of the Orange County
28 Superior Court,
Defendant.

Case No. 8:17-cv-00126 AG (KESx)

Assigned for all purposes to
Hon. Andrew J. Guilford

**DEFENDANT DAVID
YAMASAKI'S RESPONSE TO
OBJECTIONS TO EVIDENCE
SUBMITTED IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

Date: January 29, 2018
Time: 10:00 a.m.
Courtroom: 10D
Judge: Hon. Andrew J. Guilford

Defendant David Yamasaki, in his official capacity as Court Executive Officer/Clerk of the Orange County Superior Court (“OCSC”) submits the following Response to Plaintiff Courthouse News Service’s (“CNS”) Objections To Evidence Submitted In Support OCSC’s Motion for Summary Judgment.

I. OBJECTIONS TO THE DECLARATION OF SARA OCHOA
OBJECTION NO. 1:

“OCSC cannot simply publish all new civil unlimited complaints to an electronic in-box without some form of minimal review because California law mandates that certain types of cases must either be sealed or withheld from public view.”

(Ochoa Decl. ¶ 18)

GROUND FOR OBJECTION NO. 1:

Lack of foundation as to personal knowledge; opinion testimony by lay witness; contradicted by deposition testimony. (Fed. R. Evid. 601, 602; Fed. R. Evid. 701). The witness testified in her deposition that she does not recall ever hearing the term electronic in-box and does not recall what she was thinking of when she used that term in her declaration ¶ 18. Ochoa Depo. 300:11-22. Ex. 16 to Fetterly Decl. The witness has not examined other courts’ e-filing systems that permit the filer to code a complaint for immediate public access (by using a check box or a radio button); and, further, she admitted in her deposition that she has never discussed speeding up the process for making complaints accessible to the public with her superiors. Ochoa Depo. 91:19-25, 92:16-25, 169:2-17, 175:25-176:13, 269:14-272:17, 277:9-14, 326:21-327:3. She also is expressing a legal opinion that California law requires that a court employee must review a complaint before it is made publicly available, but she is not a lawyer. See Ochoa Depo. 210:15-20. (All excerpts of the Ochoa Deposition are attached as Ex. 16 to Fetterly Decl.) Mr. Wertheimer, the OCSC general counsel, testified in his deposition that the determination of whether a complaint should be “sealed for some reason or

another” has to be made “by the filing party *or* ...by the clerk.” (Wertheimer Depo. 105:19-106:3, emphasis added, Ex. 19 to Fetterly Decl.)

RESPONSE TO OBJECTION NO. 1:

CNS’s objections are without merit for the reasons below.

Ms. Ochoa has established proper foundation for her statement. Consistent with her testimony throughout her deposition, Ms. Ochoa is expressing the basic opinion that new civil complaints cannot be made public (by way of an electronic inbox or any other means) without review by OCSC staff, specifically Legal Processing Specialists (“LPSs”), in order to ensure that complaints that are required to be sealed or kept confidential are not accidentally made public. Ms. Ochoa established a factual foundation for her opinion by way of the 18 confidential complaints she identified that would have been made public but for LPS review. Declaration Cary D. Sullivan In Support of Reply (“Sullivan Decl. ISO Reply”) ¶ 4, Ex. B, Sara Ochoa Deposition Testimony (“Ochoa Depo.”), 217:20-219:9; 221:1-13; 223:17-224:5. Ms. Ochoa’s statement in her declaration simply explains that, in her experience, she is unaware of any way to ensure that complaints that are required to be sealed or kept confidential are not accidentally made public without LPS review. As Deputy Operations Manager for civil e-filing at OCSC, responsible for overseeing the e-filing unit at the Civil Justice Center, ECF No. 75-2, Declaration of Sara Ochoa (“Ochoa Decl.”) ¶ 1, and given the complaints she identified, Ms. Ochoa’s personal knowledge and experience provide more than sufficient foundation for this statement.

Further, while Ms. Ochoa testified that she was not familiar with the details of the proposed electronic in-box and that she has not examined other courts’ e-filing systems, neither is required for foundational purposes. Ms. Ochoa testified about numerous examples where confidential complaints would have been made public but for LPS review. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo. 217:20-219:9; 221:1-13; 223:17-224:5. This demonstrable fact, alone, provides

1 foundation for Ms. Ochoa's statement by establishing that confidential complaints
 2 are not always properly designated by filers, thereby necessitating LPS review as a
 3 backstop. And while CNS quibbles with the exact number of confidential
 4 complaints that would have been made public but for LPS review, CNS concedes
 5 that 13 would have been made public but for LPS review. ECF No. 84, CNS
 6 Response to OCSC SUF ("CNS Resp. to SUF"), ¶ 21. In other words, CNS
 7 concedes the dispositive fact that, but for LPS review, more than a dozen
 8 confidential complaints would have been made public.

9 Ms. Ochoa is not providing a legal opinion; she is simply stating her
 10 understanding of the sealing and confidentiality requirements that create the need
 11 for LPS review. As Deputy Operations Manager for civil e-filing at OCSC,
 12 responsible for overseeing the e-filing unit at the Civil Justice Center, ECF No. 75-
 13 2, Ochoa Decl. ¶ 1, Ms. Ochoa is required to be familiar with these requirements in
 14 order to perform her job duties, and she personally reviewed these requirements in
 15 the context of her job. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo., 207:24-
 16 210:14. In fact, several of the training materials that her staff use summarize these
 17 requirements. *See id.* ¶ 4, Ex. B, Ochoa Depo., Ex. 8 (119:5-129:5); Ex. 10 (133:7-
 18 135:21); Ex. 11 (136:5-139:21); Ex. 12 (139:23-141:10); Ex. 13 (141:18-144:20).
 19 And Mr. Wertheimer's testimony is neither contradictory nor inconsistent with Ms.
 20 Ochoa's statement. Ms. Ochoa works in the clerk's office at OCSC, and her
 21 ultimate superior is David Yamasaki, CEO and Clerk of OCSC. *See id.* ¶ 4, Ex. B,
 22 Ochoa Depo., 155:22-156:20. Thus, Ms. Ochoa and her staff work for and on
 23 behalf of the OCSC Clerk, helping to make sealing and confidentiality
 24 determinations where appropriate.

25 **OBJECTION NO. 2:**

26 "It is not possible for OCSC to comply with its legal obligations to seal or
 27 otherwise hold in confidence complaints in these and similar categories unless one
 28 of our new complaint LPSs reviews each complaint prior to publication."

(Ochoa Decl. ¶ 19)

GROUND FOR OBJECTION NO. 2:

Opinion testimony by lay witness; contradicted by deposition testimony.

(Fed. R. Evid. 701). The witness is expressing a legal opinion that California law requires that a court employee must review a complaint before it is made publicly available, but she is not a lawyer. See Ochoa Depo. 210:15-20. Mr. Wertheimer, the OCSC general counsel, testified in his deposition that the determination of whether a complaint should be “sealed for some reason or another” has to be made “by the filing party *or* ...by the clerk.” (Wertheimer Depo. 105:19-106:3, emphasis added, Ex. 19 to Fetterly Decl.)

RESPONSE TO OBJECTION NO. 2:

CNS’s objections are without merit for the reasons below.

Ms. Ochoa is not providing a legal opinion; she is simply stating her understanding of the sealing and confidentiality requirements that create the need for LPS review. Moreover, Ms. Ochoa is not opining that LPS review is specifically required by California law. She is opining that LPS review is necessary, as a practical matter, in order for OCSC to ensure that confidential complaints are kept confidential and not accidentally made public. As Deputy Operations Manager for civil e-filing at OCSC, responsible for overseeing the e-filing unit at the Civil Justice Center, ECF No. 75-2, Ochoa Decl. ¶ 1, Ms. Ochoa is required to be familiar with these requirements in order to perform her job duties, and she personally reviewed these requirements in the context of her job. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo., 207:24-210:14. In fact, several of the training materials that her staff use summarize these requirements. *See id.* ¶ 4, Ex. B, Ochoa Depo., Ex. 8 (119:5-129:5); Ex. 10 (133:7-135:21); Ex. 11 (136:5-139:21); Ex. 12 (139:23-141:10); Ex. 13 (141:18-144:20). And Mr. Wertheimer’s testimony is neither contradictory nor inconsistent with Ms. Ochoa’s statement. Ms. Ochoa works in the clerk’s office at OCSC, and her ultimate superior is David

1 Yamasaki, CEO and Clerk of OCSC. *See id.* ¶ 4, Ex. B, Ochoa Depo., 155:22-
 2 156:20. Thus, Ms. Ochoa and her staff work for and on behalf of the OCSC Clerk,
 3 helping to make sealing and confidentiality determinations where appropriate.

4 In addition, Ms. Ochoa testified about numerous examples where
 5 confidential complaints would have been made public but for LPS review. *See id.*
 6 ¶ 4, Ex. B, Ochoa Depo., 217:20-219:9; 221:1-13; 223:17-224:5. This
 7 demonstrable fact, alone, provides foundation for Ms. Ochoa's statement by
 8 establishing that confidential complaints are not always properly designated by
 9 filers, thereby necessitating LPS review as a backstop. And while CNS quibbles
 10 with the exact number of confidential complaints that would have been made public
 11 but for LPS review, CNS concedes that 13 would have been made public but for
 12 LPS review. ECF No. 84, CNS Resp. to SUF, ¶ 21. In other words, CNS concedes
 13 the dispositive fact that, but for LPS review, more than a dozen confidential
 14 complaints would have been made public.

15 **OBJECTION NO. 3:**

16 "LPSs review the data capture screen for new complaints, as well as the new
 17 complaints themselves, to ensure that new complaints are properly sealed or held in
 18 confidence. For example, in some cases, the e-filer may improperly classify a
 19 complaint as "Petition Other" or some other category in our e-filing system that
 20 fails to alert our new complaint LPSs that the complaint requires special handling.
 21 In addition, some of these complaints are filed by pro se litigants who may not
 22 understand that the law requires their pleadings to be filed under seal, let alone that
 23 they must properly mark their filings as "confidential." In other cases, pro se and
 24 represented litigants may properly mark the face pages of their complaints and civil
 25 cover sheets as "confidential," but fail to note in the "Comments" section of our
 26 e-filing submission form that their complaints must be filed under seal or
 27 maintained in confidence."

28 (Ochoa Decl. ¶ 20)

1 GROUNDS FOR OBJECTION NO. 3:

2 **Contradicted by deposition testimony; irrelevant testimony** (Fed. R.
3 Evid. 401, 402). The witness’s first, conclusory statement that LPS review is
4 necessary “to ensure the new complaints are properly sealed or held in confidence”
5 is in conflict with her sworn deposition testimony that the LPS relies solely on the
6 filer to indicate whether the complaint should be kept confidential. Ochoa Depo.
7 208:11-19, 210:9-14; see also, Ochoa Dec. ¶ 19 at 8:15-16 (the Comments box “is
8 used to notify the Court and its LPSs that a particular complaint should be sealed or
9 held in confidence.”) Mr. Wertheimer also testified in his deposition that the
10 determination of whether a complaint should be “sealed for some reason or
11 another” has to be made “by the filing party *or* ...by the clerk.” (Wertheimer Depo.
12 105:19-106:3, emphasis added, Ex. 19 to Fetterly Decl.) The remaining statements
13 (after the first sentence) regarding improper classifications (including Petition
14 Other) are irrelevant.

15 RESPONSE TO OBJECTION NO. 3:

16 CNS’s objections are without merit for the reasons below.

17 Ms. Ochoa’s statement is not contradicted by anything. Ms. Ochoa testified
18 about numerous examples where confidential complaints would have been made
19 public but for LPS review. Sullivan Decl. ISO Reply ¶ 4, Ex. B , Ochoa Depo.,
20 217:20-219:9; 221:1-13; 223:17-224:5. This demonstrable fact, alone, provides
21 foundation for Ms. Ochoa’s statement by establishing that confidential complaints
22 are not always properly designated by filers, thereby necessitating LPS review as a
23 backstop. And while CNS quibbles with the exact number of confidential
24 complaints that would have been made public but for LPS review, CNS concedes
25 that 13 would have been made public but for LPS review. ECF No. 84, CNS Resp.
26 to SUF, ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS
27 review, more than a dozen confidential complaints would have been made public.

28 Moreover, while LPSs necessarily rely on information provided by filers –

1 the only information LPSs are able to review is that contained in the complaint and
 2 any other information the filer may provide – filers do not always mark the caption
 3 pages of their complaints, as required, for sealing or confidential treatment.
 4 Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo., 217:20-219:9; 221:1-13;
 5 223:17-224:5. Thus, because filers do not always designate their complaints in the
 6 right way, LPS review is necessary, as established above, to prevent confidential
 7 complaints from accidentally being made public.

8 Mr. Wertheimer’s testimony is neither contradictory nor inconsistent with
 9 Ms. Ochoa’s statement. Ms. Ochoa works in the clerk’s office at OCSC, and her
 10 ultimate superior is David Yamasaki, CEO and Clerk of OCSC. *See id.* ¶ 4, Ex. B,
 11 Ochoa Depo., 155:22-156:20. Thus, Ms. Ochoa and her staff work for and on
 12 behalf of the OCSC Clerk, helping to make sealing and confidentiality
 13 determinations where appropriate.

14 The balance of Ms. Ochoa’s statement is not irrelevant. It provides valuable
 15 context by describing the many ways in which confidential complaints might
 16 accidentally be made public for lack of proper designation, thereby further
 17 demonstrating the need for LPS review.

18 **OBJECTION NO. 4:**

19 “In other words, without LPS review, each of these complaints (other than
 20 the one filed with the motion to seal) would have been made public because the
 21 documents were not coded for sealing or confidentiality before LPS review.”

22 (Ochoa Decl. ¶ 21 at 9:7-10)

23 **GROUND FOR OBJECTION NO. 4:**

24 **Contradicted by deposition testimony; irrelevant testimony** (Fed. R.
 25 Evid. 401, 402). The witness’s conclusory statement is in conflict with her sworn
 26 deposition testimony that the LPS relies solely on the filer to indicate whether the
 27 complaint should be kept confidential. Ochoa Depo. 208:11-19, 210:9-14; Ochoa
 28 Dec. ¶ 19 at 8:15-16 (the Comments box “is used to notify the Court and its LPSs

1 that a particular complaint should be sealed or held in confidence.”). The testimony
2 is irrelevant because it is not probative of whether LPS review would be necessary
3 prior to public access to non-confidential complaints in an upgraded electronic
4 system whereby the filer controls access directly.

5 **RESPONSE TO OBJECTION NO. 4:**

6 CNS’s objections are without merit for the reasons below.

7 Ms. Ochoa’s statement is not contradicted by anything. Ms. Ochoa testified
8 about numerous examples where confidential complaints would have been made
9 public but for LPS review. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo.,
10 217:20-219:9; 221:1-13; 223:17-224:5. This demonstrable fact, alone, provides
11 foundation for Ms. Ochoa’s statement by establishing that confidential complaints
12 are not always properly designated by filers, thereby necessitating LPS review as a
13 backstop. And while CNS quibbles with the exact number of confidential
14 complaints that would have been made public but for LPS review, CNS concedes
15 that 13 would have been made public but for LPS review. ECF No. 84, CNS Resp.
16 to SUF, ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS
17 review, more than a dozen confidential complaints would have been made public.

18 Moreover, while LPSs necessarily rely on information provided by filers –
19 the only information LPSs are able to review is that contained in the complaint and
20 any other information the filer may provide – filers do not always mark the caption
21 pages of their complaints, as required, for sealing or confidential treatment.
22 Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo., 217:20-219:9; 221:1-13;
23 223:17-224:5. Thus, because filers do not always designate their complaints in the
24 right way, LPS review is necessary, as established above, to prevent confidential
25 complaints from accidentally being made public.

26 Ms. Ochoa’s statement is not irrelevant. First, the purported “upgraded
27 electronic system whereby the filer controls access directly” does not exist at OCSC
28 and, thus, is purely speculative. Ms. Ochoa’s statement cannot be rendered

1 irrelevant by something that doesn't exist. Second, Ms. Ochoa already established
2 – and CNS *conceded* – the dispositive fact that, but for LPS review, numerous
3 confidential complaints would have been made public because filers did not
4 properly designate their complaints. *See id.* ¶ 4, Ex. B, Ochoa Depo., 217:20-
5 219:9; 221:1-13; 223:17-224:5; ECF No. 84, CNS Resp. to SUF, ¶ 21. This proves
6 that relying solely on filers to determine confidentiality is not a failsafe approach,
7 thereby making Ms. Ochoa's statement highly relevant.

8 **OBJECTION NO. 5:**

9 “Despite the fact that new complaints must be reviewed prior to publication,
10 OCSC's LPSs have become quite proficient in reviewing new civil unlimited
11 complaints and in publishing those that are not to be maintained in confidence in a
12 timely fashion.”

13 (Ochoa Decl. ¶ 24)

14 **GROUND FOR OBJECTION NO. 5:**

15 **Contradicted by deposition testimony; opinion testimony by lay witness.**
16 (Fed. R. Evid. 701). As to the initial statement that new complaints must be
17 reviewed prior to publication, Ms. Kruse testified that if the Court were to
18 implement a system that allows the filer to check a box that would automatically
19 designate new complaints for public access or for confidential treatment, the LPS
20 would not have to review new complaints prior to publication. Kruse Depo. 397:4-
21 20. Ex. 17 to Fetterly Decl. Additionally, Mr. Wertheimer testified in his
22 deposition that the determination of whether a complaint should be “sealed for
23 some reason or another” has to be made “by the filing party *or* ...by the clerk.”
24 (Wertheimer Depo. 105:19-106:3, emphasis added, Ex. 19 to Fetterly Decl.)
25 Ms. Ochoa's assertion that the LPSs are publishing non-confidential complaints in a
26 “timely fashion” is a legal opinion that the lay witness is not competent to make.

27 **RESPONSE TO OBJECTION NO. 5:**

28 CNS's objections are without merit for the reasons below.

1 Ms. Ochoa's statement is not contradicted by anything. Ms. Ochoa testified
2 about numerous examples where confidential complaints would have been made
3 public but for LPS review. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo.,
4 217:20-219:9; 221:1-13; 223:17-224:5. This demonstrable fact, alone, provides
5 foundation for Ms. Ochoa's statement by establishing that confidential complaints
6 are not always properly designated by filers, thereby necessitating LPS review as a
7 backstop. And while CNS quibbles with the exact number of confidential
8 complaints that would have been made public but for LPS review, CNS concedes
9 that 13 would have been made public but for LPS review. ECF No. 84, CNS Resp.
10 to SUF, ¶ 21. In other words, CNS concedes the dispositive fact that, but for LPS
11 review, more than a dozen confidential complaints would have been made public.

12 CNS misrepresents Ms. Kruse's testimony, which does not contradict Ms.
13 Ochoa's statement. Ms. Kruse testified that if the Court "adopted and agreed upon"
14 a process by which it relied solely on a filer's designation of confidentiality, then
15 LPS review would not be necessary. Sullivan Decl. ISO Reply ¶ 5, Ex. C, Deborah
16 T. Kruse Deposition Testimony ("Kruse Depo."), 397:4-20. But Ms. Kruse then
17 went on to testify that such a process "presents the same issue with the same
18 potential for error rate and concern with the filer checking or not checking [the
19 correct box]," and that it would lose "that layer of proverbial protection [through
20 LPS review] to try and protect the filings, that they're done correctly." *See id.* ¶5,
21 Ex. C, Kruse Depo., 404:7-407:2. CNS cherry-picked a soundbite and ignored the
22 totality of Ms. Kruse's testimony, rendering CNS's characterization of Ms. Kruse's
23 testimony misleading and improper.

24 In addition, Mr. Wertheimer's testimony is neither contradictory nor
25 inconsistent with Ms. Ochoa's statement. Ms. Ochoa works in the clerk's office at
26 OCSC, and her ultimate superior is David Yamasaki, CEO and Clerk of OCSC.
27 *See id.* ¶ 4, Ex. B, Ochoa Depo., 155:22-156:20. Thus, Ms. Ochoa and her staff
28 work for and on behalf of the OCSC Clerk, helping to make sealing and

1 confidentiality determinations where appropriate.

2 Ms. Ochoa is not providing a legal opinion; she is simply describing her
3 personal knowledge and experience with respect to the speed and efficiency of the
4 LPS review process. As Deputy Operations Manager for civil e-filing at OCSC,
5 responsible for overseeing the e-filing unit at the Civil Justice Center, ECF No. 75-
6 2, Ochoa Decl. ¶ 1, Ms. Ochoa's whole job revolves around this process. She has a
7 direct, personal, and factual basis for making this statement.

8 **OBJECTION NO. 6:**

9 "It is true that our LPSs "file" new civil unlimited complaints at the same
10 time they evaluate whether these new complaints must be sealed or maintained in
11 confidence."

12 (Ochoa Decl. ¶ 26)

13 **GROUND FOR OBJECTION NO. 6:**

14 **Opinion testimony by lay witness.** (Fed. R. Evid. 701). When complaints
15 are "filed" is a question of law, on which the lay witness is not competent to opine.
16 (If a complaint is accepted by the LPS, it is considered filed on the day the filer
17 e-filed it, even if the LPS accepts it the next day or later, for purposes of statutes of
18 limitations.)

19 **RESPONSE TO OBJECTION NO. 6:**

20 CNS's objections are without merit for the reasons below.

21 Ms. Ochoa is not providing a legal opinion; she is simply describing her
22 personal knowledge and experience with respect to the LPS review process. As
23 Deputy Operations Manager for civil e-filing at OCSC, responsible for overseeing
24 the e-filing unit at the Civil Justice Center, ECF No. 75-2, Ochoa Decl. ¶ 1, Ms.
25 Ochoa's whole job revolves around this process. She testified at length about the
26 different tasks LPSs perform during the review process, and that upon completion
27 of that process, non-confidential complaints are published to the public docket and
28 considered officially filed. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo.,

1 27:17-47:23, 51:21-53:17. Ms. Ochoa has a direct, personal, and factual basis for
2 making this statement, which, by the way, is consistent with California law. *See*
3 Cal. R. Ct. 2.250(B)(7) (electronic filing “does not include the processing and
4 review of the document, and its entry into the court records, which are necessary for
5 a document to be officially filed”).

6 **OBJECTION NO. 7:**

7 “LPSs have no practical way to determine whether any particular complaint
8 might be “newsworthy” in the eyes of Courthouse News Service or any other
9 member of the public, and cannot be expected to — and do not — identify and
10 more promptly publish complaints for this reason.”

11 (Ochoa Decl. ¶ 27)

12 **GROUND FOR OBJECTION NO. 7:**

13 **Irrelevant testimony; opinion testimony by lay witness.** (Fed. R. Evid.
14 401, 402; Fed. R. Evid. 701). The first statement is irrelevant because Courthouse
15 News Service is not requesting that the OCSC identify and promptly publish only
16 “newsworthy” complaints; it is asking that OCSC make all complaints available the
17 same day they are submitted by the filer. Additionally, whether the OCSC can be
18 “expected” to more promptly publish complaints than it currently does is a question
19 of law, on which the lay witness is not competent to opine.

20 **RESPONSE TO OBJECTION NO. 7:**

21 CNS’s objections are without merit for the reasons below.

22 OCSC appreciates CNS’s concession that it “is not requesting that the OCSC
23 identify and promptly publish only ‘newsworthy’ complaints; it is asking that
24 OCSC make all complaints available the same day they are submitted by the filer.”
25 This admission renders CNS’s focus on and analyses specific to civil complex
26 cases, ECF No. 83, CNS’s Opposition to OCSC’s Motion for Summary Judgment
27 (“Opp.”), 16:3-24; ECF No. 85, CNS’s Additional Material Facts (“AMF”), ¶¶ 126-
28 141, irrelevant as a matter of fact because CNS seeks equal access to all civil

1 complaints (complex and non-complex alike). CNS's focus on complex cases,
2 particularly in light of this admission, can only be intended to confuse or mislead
3 the Court.

4 Ms. Ochoa is not providing a legal opinion; she is simply describing her
5 personal knowledge and experience with respect to the LPS review process. As
6 Deputy Operations Manager for civil e-filing at OCSC, responsible for overseeing
7 the e-filing unit at the Civil Justice Center, ECF No. 75-2, Ochoa Decl. ¶ 1, Ms.
8 Ochoa's whole job revolves around this process. In the first sentence of paragraph
9 26 of her declaration, to which CNS does not object, Ms. Ochoa states that LPSs
10 review new complaints in the order received and do not review the substance of a
11 complaint to determine newsworthiness or for any other reason. Ochoa Decl., ¶ 26.
12 Thus, it naturally follows that LPSs do not and cannot be expected to identify and
13 publish "newsworthy" complaints more promptly than other complaints. Ms.
14 Ochoa has a direct, personal, and factual basis for making this statement.

15 **OBJECTION NO. 8:**

16 "As I mentioned above, it is not possible for OCSC to comply with its legal
17 obligations to keep certain types of complaints confidential and to seal certain types
18 of complaints without having LPSs review each new complaint that OCSC
19 receives. I am not aware of any way for OCSC to comply with these requirements
20 in a quicker way, particularly given OCSC's budgetary and fiscal limitations. And
21 I am not aware of any other state trial court system that is able to comply with such
22 requirements — and provide public access to new civil unlimited complaints — in
23 a quicker way."

24 (Ochoa Decl. ¶ 30)

25 **GROUND FOR OBJECTION NO. 8:**

26 **Lack of foundation as to personal knowledge; speculation; opinion**
27 **testimony by lay witness; contradicted by deposition testimony.** (Fed. R. Evid.
28 601, 602; Fed. R. Evid. 701). The witness first expresses a legal opinion that

1 California law requires that a court employee must review a complaint before it is
2 made publicly available, but she is not a lawyer. Mr. Wertheimer, the OCSC
3 general counsel, testified in his deposition that the determination of whether a
4 complaint should be “sealed for some reason or another” has to be made “by the
5 filing party *or* ...by the clerk.” (Wertheimer Depo. 105:19-106:3, emphasis added,
6 Ex. 19 to Fetterly Decl.) There is no foundation that the witness has personal
7 knowledge of OCSC’s “budgetary and fiscal limitations,” as her work does not
8 involve fiscal analysis. *Ward*, 173 F. 3d at 617-18 (to establish a proper
9 foundation, the source of the witness’ personal knowledge must be disclosed,
10 whether it be personal observation, a written directive, direct conversation, or some
11 other source). She provides no testimony establishing that the court has budgetary
12 or fiscal concerns that affect the court’s ability to provide public access to new civil
13 unlimited complaints. The witness is speculating as to the court’s future
14 capabilities and potential limitations. Further, the witness admitted that she has no
15 personal knowledge regarding what other courts in California or elsewhere do, let
16 alone the speed at which any other court in the state – or anywhere else – provides
17 public access to newly filed civil unlimited complaints. (Ochoa Depo. 269:14-
18 272:17, 277:9-14, 326:21-327:3; Ex. 16 to Fetterly Decl.) She further admitted at
19 her deposition that she has not been involved in, or aware of, any discussions about
20 how OCSC could potentially provide quicker access to the public, and therefore
21 lacks foundation to provide an opinion on this issue. (Ochoa Depo. 176:3-17;
22 Ex. 16 to Fetterly Decl.).

23 **RESPONSE TO OBJECTION NO. 8:**

24 CNS’s objections are without merit for the reasons below.

25 Ms. Ochoa is not providing a legal opinion; she is simply stating her
26 understanding of the sealing and confidentiality requirements that create the need
27 for LPS review. Moreover, Ms. Ochoa is not opining that LPS review is
28 specifically required by California law. She is opining that LPS review is

1 necessary, as a practical matter, as a backstop in order for OCSC to fulfill its
2 obligation to ensure that confidential complaints are kept confidential and not
3 accidentally made public. As Deputy Operations Manager for civil e-filing at
4 OCSC, responsible for overseeing the e-filing unit at the Civil Justice Center, ECF
5 No. 75-2, Ochoa Decl. ¶ 1, Ms. Ochoa is required to be familiar with the sealing
6 and confidentiality requirements in order to perform her job duties. Sullivan Decl.
7 ISO Reply ¶ 4, Ex. B, Ochoa Depo., 207:24-210:14. In fact, some of the training
8 materials that her staff use summarize these requirements. *See id.* ¶ 4, Ex. B,
9 Ochoa Depo., Ex. 8 (119:5-129:5); Ex. 10 (133:7-135:21); Ex. 11 (136:5-139:21);
10 Ex. 12 (139:23-141:10); Ex. 13 (141:18-144:20).

11 In addition, Ms. Ochoa testified about numerous examples where
12 confidential complaints would have been made public but for LPS review. *See id.* ¶
13 4, Ex. B, Ochoa Depo., 217:20-219:9; 221:1-13; 223:17-224:5. This demonstrable
14 fact, alone, provides foundation for Ms. Ochoa's statement by establishing that
15 confidential complaints are not always properly designated by filers, thereby
16 necessitating LPS review as a backstop. And while CNS quibbles with the exact
17 number of confidential complaints that would have been made public but for LPS
18 review, CNS concedes that 13 would have been made public but for LPS review.
19 ECF No. 84, CNS Resp. to SUF, ¶ 21. In other words, CNS concedes the
20 dispositive fact that, but for LPS review, more than a dozen confidential complaints
21 would have been made public.

22 Ms. Ochoa has established proper foundation for her statement regarding
23 OCSC's budgetary and fiscal limitations. As reflected in her declaration, the
24 foundation is Mr. Wertheimer's statements. ECF No. 75-2, Ochoa Decl. ¶¶ 1, 29.
25 This is sufficient foundation, even according to the authority CNS cites. *See Ward*,
26 173 F. 3d at 617-18. In addition to the statements in Mr. Wertheimer's declaration,
27 ECF No. 75-4, Declaration of Jeff Wertheimer ("Wertheimer Decl.") ¶ 10, Mr.
28 Wertheimer and Mr. Yamasaki both discussed these limitations at deposition.

1 Sullivan Decl. ISO Reply ¶ 6, Ex. D, Jeff Wertheimer Deposition Testimony
2 (“Wertheimer Depo.”) 55:10-56:23; *see id.* ¶ 7, Ex. E, David Yamasaki Deposition
3 Testimony (“Yamasaki Depo.”), 182:16-184:25.

4 Mr. Wertheimer’s testimony is neither contradictory nor inconsistent with
5 Ms. Ochoa’s statement. Ms. Ochoa works in the clerk’s office at OCSC, and her
6 ultimate superior is David Yamasaki, CEO and Clerk of OCSC. Sullivan Decl. ISO
7 Reply ¶ 4, Ex. B, Ochoa Depo., 155:22-156:20. Thus, Ms. Ochoa and her staff
8 work for and on behalf of the OCSC Clerk, helping to make sealing and
9 confidentiality determinations where appropriate.

10 Finally, Ms. Ochoa has established proper foundation for the balance of her
11 statement. Consistent with her testimony throughout her deposition, Ms. Ochoa is
12 expressing the basic opinion that new civil complaints cannot be made public (by
13 any means) without LPS review, in order to ensure that complaints that are required
14 to be sealed or kept confidential are not accidentally made public. Ms. Ochoa
15 explained that, in her experience, she is unaware of any way to ensure that
16 complaints that are required to be sealed or kept confidential are not accidentally
17 made public without LPS review, and she is unaware of any way to speed up this
18 process. While Ms. Ochoa testified that she was not familiar with the details of
19 other courts’ e-filing systems, that is not required for foundational purposes. As
20 Deputy Operations Manager for civil e-filing at OCSC, responsible for overseeing
21 the e-filing unit at the Civil Justice Center, ECF No. 75-2, Ochoa Decl. ¶ 1, Ms.
22 Ochoa’s personal knowledge and experience provide more than sufficient
23 foundation for this statement, particularly given the numerous examples she
24 provided where LPS review was the only thing that prevented a confidential
25 complaint from being made public.

26 **II. OBJECTIONS TO THE DECLARATION OF DEBORAH KRUSE**
27 **OBJECTION NO. 9:**

28 “Trade Secrets Cases. Complaints in trade secrets cases may be filed

1 conditionally under seal as requested by the e-filing user in the “Comment” box or
2 by including language on the face page of the document at the time of submission.
3 Without LPS review, these new complaints would not be properly sealed or held in
4 confidence.”

5 (Kruse Decl. ¶ 7)

6 **GROUND FOR OBJECTION NO. 9:**

7 **Contradicted by deposition testimony.** The second sentence is
8 contradicted by the first sentence and by the witness sworn deposition testimony
9 that the complex LPSs rely on the filer to indicate whether a trade secret complaint
10 should be conditionally sealed and that if the filer could automatically designate
11 whether the complaint should be publicly accessible, LPS review would not be
12 required before release. Kruse Depo. 166:12-167:16, 226:24-227:9, 333:6-334:8,
13 339:16-340:2, 397:4-20. (All excerpts of the Kruse Deposition are attached as
14 Ex. 17 to Fetterly Decl.) Mr. Wertheimer testified in his deposition that the
15 determination of whether a complaint should be “sealed for some reason or
16 another” has to be made “by the filing party *or* ...by the clerk.” (Wertheimer Depo.
17 105:19-106:3, emphasis added, Ex. 19 to Fetterly Decl.)

18 **RESPONSE TO OBJECTION NO. 9:**

19 CNS’s objections are without merit for the reasons below.

20 Ms. Kruse’s testimony is not contradicted by itself. While Ms. Kruse
21 describes the ways in which filers may request sealing or confidential treatment –
22 by marking the face page of the complaint or so requesting in the ‘comments’ field
23 – Ms. Kruse and Ms. Ochoa both testified about numerous examples where
24 confidential complaints would have been made public but for LPS review. Sullivan
25 Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo. 217:20-219:9; 221:1-13; 223:17-224:5
26 *see id.* ¶ 5, Ex. C, Kruse Depo. 225:10-228:5; 335:17-339:15. This demonstrable
27 fact, alone, provides foundation for Ms. Kruse’s statement by establishing that
28 confidential complaints are not always properly designated by filers, thereby

1 necessitating LPS review as a backstop. And while CNS quibbles with the exact
2 number of confidential complaints that would have been made public but for LPS
3 review, CNS concedes that 13 would have been made public but for LPS review.
4 ECF No. 84, CNS Resp. to SUF, ¶ 21. In other words, CNS concedes the
5 dispositive fact that, but for LPS review, more than a dozen confidential complaints
6 would have been made public.

7 Mr. Wertheimer's testimony is neither contradictory nor inconsistent with
8 Ms. Kruse's statement. As Deputy Court Operations Manager, responsible for
9 complex litigation oversight, including case processing for the complex litigation
10 department, ECF No. 75-3, Declaration of Deborah T. Kruse ("Kruse Decl.") ¶ 1,
11 Ms. Kruse works in the clerk's office at OCSC, and her ultimate superior is David
12 Yamasaki, CEO and Clerk of OCSC. *See id.* ¶ 5, Ex. C, Kruse Depo. 57:13-24.
13 Thus, Ms. Kruse and her staff work for and on behalf of the OCSC Clerk, helping
14 to make sealing and confidentiality determinations where appropriate.

15 **OBJECTION NO. 10:**

16 "While it is true that our LPSs 'file' new civil unlimited complaints in the
17 complex unit at the same time they evaluate whether these new complaints must be
18 sealed or maintained in confidence, public access is not unduly withheld during this
19 time."

20 (Kruse Decl. ¶ 9.)

21 **GROUND FOR OBJECTION NO. 10:**

22 **Contradicted by testimony; opinion testimony by lay witness.** (Fed. R.
23 Evid. 701). When complaints are "filed" is a question of law, on which the lay
24 witness is not competent to opine. (If a complaint is accepted by the LPS, it is
25 considered filed on the day the filer e-filed it, even if the LPS accepts it the next
26 day or later, for purposes of statutes of limitations.) Whether public access is
27 "unduly withheld" is also a question of law on which the witness is not competent
28 to opine. Moreover, if a complaint is accepted by the LPS, it must be considered

1 filed on the day the filer submitted it, even if the LPS accepts it the next day or
2 later, for purposes of statutes of limitations.

3 **RESPONSE TO OBJECTION NO. 10:**

4 CNS's objections are without merit for the reasons below.

5 Ms. Kruse is not providing a legal opinion; she is simply describing her
6 personal knowledge and experience with respect to the LPS review process. As
7 Deputy Court Operations Manager, responsible for complex litigation oversight,
8 including case processing for the complex litigation department, ECF No. 75-3,
9 Kruse Decl. ¶ 1, Ms. Kruse's job involves direct oversight of this process in the
10 complex department. She testified about the different tasks LPSs perform during
11 the review process, and that upon completion of that process, non-confidential
12 complaints are published to the public docket and considered officially filed. *See*
13 *id.* ¶ 5, Ex. C, Kruse Depo. (132:25-139:3; 140:22-141:20), discussing Sullivan
14 Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo. Exhibit 10 thereto. Ms. Kruse has a
15 direct, personal, and factual basis for making this statement, which, by the way, is
16 consistent with California law. *See* Cal. R. Ct. 2.250(B)(7) (electronic filing "does
17 not include the processing and review of the document, and its entry into the court
18 records, which are necessary for a document to be officially filed").

19 Moreover, CNS has not identified any purported contradiction in or with the
20 cited statement. Ms. Kruse is simply describing how the LPS process works,
21 consistent with Rule of Court 2.250(B)(7). The date of filing is irrelevant with
22 respect to Ms. Kruse's statement, and certainly does not create a contradiction.

23 **OBJECTION NO. 11:**

24 "LPSs have no practical way to determine whether any particular complaint
25 might be 'newsworthy' in the eyes of Courthouse News Service or any other
26 member of the public, and cannot be expected to — and do not — identify and
27 more promptly publish complaints for this reason."

28 (Kruse Decl. ¶ 10.)

1 GROUNDS FOR OBJECTION NO. 11:

2 **Irrelevant testimony; opinion testimony by lay witness.** (Fed. R. Evid.
3 401, 402; Fed. R. Evid. 701). The first statement is irrelevant because Courthouse
4 News Service is not requesting that the OCSC identify and promptly publish only
5 “newsworthy” complaints; it is asking that OCSC make all complaints available the
6 same day they are submitted by the filer. Additionally, whether the OCSC can be
7 “expected” to more promptly publish complaints than it currently does is a question
8 of law, on which the lay witness is not competent to opine.

9 **RESPONSE TO OBJECTION NO. 11:**

10 CNS’s objections are without merit for the reasons below.

11 OCSC appreciates CNS’s concession that it “is not requesting that the OCSC
12 identify and promptly publish only ‘newsworthy’ complaints; it is asking that
13 OCSC make all complaints available the same day they are submitted by the filer.”
14 This admission renders CNS’s focus on and analyses specific to civil complex
15 cases, ECF No. 83, Opp., 16:3-24; ECF No. 85, AMF, ¶¶ 126-141, irrelevant as a
16 matter of fact because CNS seeks equal access to all civil complaints (complex and
17 non-complex alike). CNS’s focus on complex cases, particularly in light of this
18 admission, can only be intended to confuse or mislead the Court.

19 Ms. Kruse is not providing a legal opinion; she is simply describing her
20 personal knowledge and experience with respect to the LPS review process. As
21 Deputy Court Operations Manager, responsible for complex litigation oversight,
22 including case processing for the complex litigation department, ECF No. 75-3,
23 Kruse Decl. ¶ 1, Ms. Kruse’s job involves direct oversight of this process in the
24 complex department. In the first sentence of paragraph 10 of her declaration, to
25 which CNS does not object, Ms. Kruse states that, just like for non-complex cases,
26 complex department LPSs review new complaints in the order received and do not
27 review the substance of a complaint to determine newsworthiness or for any other
28 reason. *See* ECF No. 75-3, Kruse Decl., ¶ 10. Thus, it naturally follows that LPSs

1 do not and cannot be expected to identify and publish “newsworthy” complaints
2 more promptly than other complaints. Ms. Kruse has a direct, personal, and factual
3 basis for making this statement.

4 **OBJECTION NO. 12:**

5 “As mentioned above, I understand that OCSC is required by California law
6 to keep certain types of complaints confidential and to seal certain types of
7 complaints. I am not aware of any way for OCSC to comply with these
8 requirements without having LPSs review each new complaint that OCSC receives.
9 I am not aware of any way for OCSC to comply with these requirements in a
10 quicker way, particularly given OCSC’s budgetary and fiscal limitations. I am not
11 aware of any other state trial court system that is able to comply with such
12 requirements — and provide public access to new civil unlimited complaints — in
13 a quicker way.”

14 (Kruse Decl. ¶ 13.)

15 **GROUND FOR OBJECTION NO. 12:**

16 **Lack of foundation as to personal knowledge; speculation; opinion**
17 **testimony by lay witness; contradicted by deposition testimony.** (Fed. R. Evid.
18 601, 602; Fed. R. Evid. 701). The witness first expresses a legal opinion that
19 California law requires that a court employee must review a complaint before it is
20 made publicly available, but she is not a lawyer. Mr. Wertheimer, who is the
21 OCSC general counsel, testified in his deposition that the determination of whether
22 a complaint should be “sealed for some reason or another” has to be made “by the
23 filing party *or* ...by the clerk.” (Wertheimer Depo. 105:19-106:3, emphasis added,
24 Ex. 19 to Fetterly Decl.) There is no foundation that the witness has personal
25 knowledge of OCSC’s “budgetary and fiscal limitations,” as her work is not
26 involved in court operations. *Ward*, 173 F. 3d at 617-18 (to establish a proper
27 foundation, the source of the witness’ personal knowledge must be disclosed,
28 whether it be personal observation, a written directive, direct conversation, or some

1 other source). She provides no testimony establishing that the court has budgetary
2 or fiscal concerns that affect the court's ability to provide public access to new civil
3 unlimited complaints. Instead, it appears the witness is speculating as to the court's
4 capabilities and potential limitations. Further, the witness admitted that she has no
5 personal knowledge regarding what other courts in California or elsewhere do, let
6 alone the speed at which any other court in the state – or anywhere else – provides
7 public access to newly filed civil unlimited complaints. Further, the witness
8 admitted that she has not been involved in considering ways that the court could
9 provide faster public access to new complaints, such as alternatives for the current
10 way of identifying and classifying new complaints that should be filed under seal.
11 (Kruse Depo. 229:22-230:20, 340:10-341:5, 344:18-345:7; 353:24-354:13, 355:7-
12 356:1, 357:25-358:3, 397:4-20, Ex. 17 to Fetterly Decl.)

13 **RESPONSE TO OBJECTION NO. 12:**

14 CNS's objections are without merit for the reasons below.

15 Ms. Kruse is not providing a legal opinion; she is simply stating her
16 understanding of the sealing and confidentiality requirements that create the need
17 for LPS review. Moreover, Ms. Kruse is not opining that LPS review is
18 specifically required by California law. She is opining that LPS review is
19 necessary, as a practical matter, as a backstop in order for OCSC to fulfill its
20 obligation to ensure that confidential complaints are kept confidential and not
21 accidentally made public. As Deputy Court Operations Manager, responsible for
22 complex litigation oversight, including case processing for the complex litigation
23 department, ECF No. 75-3, Kruse Decl. ¶ 1, Ms. Kruse is required to be familiar
24 with the sealing and confidentiality requirements in order to perform her job duties.
25 In fact, some of the training materials that her staff use summarize these
26 requirements. *See id.* ¶ 5, Ex. C, Kruse Depo., Ex. 8 (128:9-129:3); Ex. 10 (129:20-
27 130:6)), discussing Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo. Exhibits 8
28 and 10 thereto.

1 In addition, Ms. Kruse and Ms. Ochoa both testified about numerous
2 examples where confidential complaints would have been made public but for LPS
3 review. Sullivan Decl. ISO Reply ¶ 4, Ex. B, Ochoa Depo. 217:20-219:9; 221:1-
4 13; 223:17-224:5 *see id.* ¶ 5, Ex. C, Kruse Depo., 225:10-228:5; 335:17-339:15.
5 This demonstrable fact, alone, provides foundation for Ms. Kruse's statement by
6 establishing that confidential complaints are not always properly designated by
7 filers, thereby necessitating LPS review as a backstop. And while CNS quibbles
8 with the exact number of confidential complaints that would have been made public
9 but for LPS review, CNS concedes that 13 would have been made public but for
10 LPS review. ECF No. 84, CNS Resp. to SUF, ¶ 21. In other words, CNS concedes
11 the dispositive fact that, but for LPS review, more than a dozen confidential
12 complaints would have been made public.

13 Ms. Kruse has established proper foundation for her statement regarding
14 OCSC's budgetary and fiscal limitations. As reflected in her declaration, the
15 foundation is Mr. Wertheimer's statements. ECF No. 75-3, Kruse Decl. ¶¶ 1, 12.
16 This is sufficient foundation, even according to the authority CNS cites. *See Ward*,
17 173 F. 3d at 617-18. In addition to the statements in Mr. Wertheimer's declaration,
18 ECF No. 75-4, Wertheimer Decl. ¶ 10, Mr. Wertheimer and Mr. Yamasaki both
19 discussed these limitations at deposition. Sullivan Decl. ISO Reply ¶ 6, Ex. D,
20 Wertheimer Depo., 55:10-56:23; *see id.* ¶ 7, Ex. E, Yamasaki Depo., 182:16-
21 184:25.

22 Mr. Wertheimer's testimony is neither contradictory nor inconsistent with
23 Ms. Kruse's statement. Ms. Kruse works in the clerk's office at OCSC, and her
24 ultimate superior is David Yamasaki, CEO and Clerk of OCSC. *See id.* ¶ 5, Ex. C,
25 Kruse Depo., 57:13-24. Thus, Ms. Kruse and her staff work for and on behalf of
26 the OCSC Clerk, helping to make sealing and confidentiality determinations where
27 appropriate.

28 Finally, Ms. Kruse has established proper foundation for the balance of her

1 statement. Consistent with her testimony throughout her deposition, Ms. Kruse is
2 expressing the basic opinion that new civil complaints cannot be made public (by
3 any means) without LPS review, in order to ensure that complaints that are required
4 to be sealed or kept confidential are not accidentally made public. Ms. Kruse
5 explained that, in her experience, she is unaware of any way to ensure that
6 complaints that are required to be sealed or kept confidential are not accidentally
7 made public without LPS review, and she is unaware of any way to speed up this
8 process. As Deputy Court Operations Manager, responsible for complex litigation
9 oversight, including case processing for the complex litigation department, ECF
10 No. 75-3, Kruse Decl. ¶ 1, Ms. Kruse's personal knowledge and experience provide
11 more than sufficient foundation for this statement.

12 While Ms. Kruse testified that she was not familiar with the details of other
13 courts' e-filing systems, that is not required for foundational purposes. The
14 numerous examples where LPS review prevented confidential complaints from
15 being made public, which fact CNS concedes, provides foundation for Ms. Kruse's
16 statement by establishing that confidential complaints are not always properly
17 designated by filers, thereby necessitating LPS review as a backstop.

18 **III. OBJECTIONS TO THE DECLARATION OF JEFFREY**
19 **WERTHEIMER**

20 **OBJECTION NO. 13:**

21 "OCSC has at all times acted to provide prompt public access to all court
22 records, for viewing at the court and remotely, to the full extent permitted by
23 governing California statutes and the applicable California Rules of Court."

24 (Wertheimer Decl. ¶ 8.)

25 **GROUND FOR OBJECTION NO. 13:**

26 **Lack of foundation as to personal knowledge; speculation; contradicted**
27 **by his deposition testimony.** (Fed. R. Evid. 601, 602). The witness appears to be
28 offering a legal conclusion that California statutes and Rules of Court require

1 OCSC to use LPSs to review unlimited civil complaints before they are made
2 publicly available; but, he offers no foundational facts--such as statutory language--
3 to support his conclusion; and, he also admitted in his deposition that he was
4 unfamiliar with the practices of some other California Superior Courts of allowing
5 electronic filers to control automatically at filing whether a complaint may be made
6 accessible to the public. (Wertheimer Depo. 170:1-13, 175:9-15, Exhibit 19 to
7 Fetterly Decl.) Moreover, Mr. Wertheimer testified in his deposition that the
8 determination of whether a complaint should be “sealed for some reason or
9 another” has to be made “by the filing party *or* ...by the clerk.” (Wertheimer Depo.
10 105:19-106:3, emphasis added, Ex. 19 to Fetterly Decl.)

11 **RESPONSE TO OBJECTION NO. 13:**

12 CNS’s objections are without merit for the reasons below.

13 Mr. Wertheimer is not offering a legal conclusion; he is simply describing
14 what he understands to be OCSC’s obligations under California law and OCSC’s
15 efforts to comply with these obligations. As General Counsel for the OCSC, ECF
16 No. 75-4, Wertheimer Decl. ¶ 1, Mr. Wertheimer’s job necessarily includes making
17 decisions regarding OCSC’s compliance with applicable laws. He thus has a direct,
18 personal, and factual basis for making this statement. Further, Mr. Wertheimer
19 provides the foundation for his opinion as set forth in the cited California laws that
20 require OCSC to ensure that certain types of complaints are sealed or kept
21 confidential. *See id.* ¶ 11(a)-(f).

22 Mr. Wertheimer’s familiarity with other court’s practices is irrelevant to what
23 he, as General Counsel of OCSC, understands to be OCSC’s obligations under
24 California law. That other courts may permit electronic filers to control
25 automatically at filing whether a complaint may be made accessible to the public is
26 irrelevant to Mr. Wertheimer’s understanding of OCSC’s obligations under
27 California law and how OCSC complies with these obligations.

28 Mr. Wertheimer’s testimony is neither contradictory nor inconsistent with his

1 statement. Both Ms. Ochoa and Ms. Kruse work in the clerk's office at OCSC, and
2 their ultimate superior is David Yamasaki, CEO and Clerk of OCSC. *See id.* ¶ 4,
3 Ex. B, Ochoa Depo., 155:22-156:20; *see id.* ¶ 5, Ex. C, Kruse Depo., 57:13-24.
4 Thus, Ms. Ochoa, Ms. Kruse, and their staffs work for and on behalf of the OCSC
5 Clerk, helping to make sealing and confidentiality determinations where
6 appropriate. This is not inconsistent with OCSC's efforts to provide prompt public
7 access.

8 **OBJECTION NO. 14:**

9 "Given these severe budget restrictions, OCSC does not have resources to
10 hire additional staff to review newly filed complaints. Nor can OCSC allocate
11 additional staff, beyond the five Legal Processing Specialists ("LPS") at the Civil
12 Justice Center and the three LPSs in the complex unit already dedicated to
13 reviewing and publishing new unlimited civil complaints. Establishing the system
14 that CNS is requesting would require us to hire LPSs to work 24 hours a day,
15 7 days a week to review every new civil unlimited complaint for sealing concerns
16 so that the complaint could be made public within moments of when it hits our
17 Work Queue. Doing so would take considerable staff away from other essential
18 functions of the court, including managing the huge volume of other filings the
19 court receives on a daily basis, as well as providing resources necessary to continue
20 many of our services in the family and juvenile areas, both of which are currently
21 strained beyond capacity."

22 (Wertheimer Decl. ¶ 10.)

23 **GROUND FOR OBJECTION NO. 14:**

24 **Lack of foundation as to personal knowledge; speculation.** (Fed. R. Evid.
25 601, 602). There is no foundation that the witness has personal knowledge of
26 OCSC's "budgetary and fiscal limitations," as he is a lawyer and he does not testify
27 that his responsibilities extend to studying or analyzing the court's budget, finances
28 or staffing. *Ward*, 173 F. 3d at 617-18 (to establish a proper foundation, the source

1 of the witness' personal knowledge must be disclosed, whether it be personal
2 observation, a written directive, direct conversation, or some other source).
3 Mr. Wertheimer further admitted at his deposition that OCSC did not consider
4 automated alternatives that other courts use whereby the filer automatically codes
5 the complaint for publication or confidentiality (as on the federal PACER filing
6 system) and that he not aware of anyone at OCSC pricing out different alternatives
7 to assure faster public access to newly filed complaints. (Wertheimer Depo. 170:1-
8 13, 175:9-15, Exhibit 19 to Fetterly Decl.)

9 **RESPONSE TO OBJECTION NO. 14:**

10 CNS's objections are without merit for the reasons below.

11 Mr. Wertheimer's statement is based on his direct and personal involvement
12 in the administration of OCSC. As General Counsel for the OCSC, ECF No. 75-4,
13 Wertheimer Decl. ¶ 1, Mr. Wertheimer is apprised of information regarding the
14 management of OCSC—including staffing and budgetary matters. Sullivan Decl.
15 ISO Reply ¶ 6, Ex. D, Wertheimer Depo., 41:22-46:15. His position at the court
16 establishes sufficient foundation for his statement. *See Ward*, 173 F. 3d at 617-18
17 Further, Mr. Wertheimer testified to his relationship with other court administrators
18 and the role he commonly plays in making decisions on behalf of OCSC. Sullivan
19 Decl. ISO Reply ¶ 6, Ex. D, Wertheimer Depo., 41:22-46:15.

20 Mr. Wertheimer's consideration of other court's practices is irrelevant to
21 what he, as General Counsel of OCSC, understands to be OCSC's obligations under
22 California law and the requisite staff to meet these obligations. That federal courts
23 or other state courts may use an automated process is irrelevant to how Mr.
24 Wertheimer believes OCSC, as one of the largest and busiest trial court systems in
25 the nation, can meet the needs of litigants while complying with requisite law.
26 Further, other courts may not have to consider and comply with confidentiality
27 requirements similar to those imposed by California law.

28 Finally, Mr. Wertheimer's familiarity with whether anyone at OCSC is

1 pricing out different alternatives to assure faster public access to newly filed
2 complaints is irrelevant. As an initial matter, just because Mr. Wertheimer is not
3 aware of this does not mean that it is not occurring—indeed he testified that he is
4 not aware, not that it is not happening. And even if this were the case, this does not
5 undermine his position on the need for LPS review of complaints before publication
6 to protect litigant confidentiality under California law.

7 **OBJECTION NO. 15:**

8 “LPSs have no practical way to determine whether any particular complaint
9 might be “newsworthy” in the eyes of Courthouse News Service or any other
10 member of the public, and cannot be expected to — and do not — identify and
11 more promptly publish complaints for this reason. *** I am not aware of any way
12 for OCSC to comply with these requirements without having LPSs review each
13 new complaint that OCSC receives. I also am not aware of any way for OCSC to
14 comply with these [confidentiality] requirements in a quicker way, particularly
15 given OCSC’s budgetary and fiscal limitations.”

16 (Wertheimer Decl. ¶ 12.)

17 **GROUND FOR OBJECTION NO. 15:**

18 **Irrelevant testimony; opinion testimony; contradicted by deposition**
19 **testimony; lacks personal knowledge.** (Fed. R. Evid. 602; Fed. R. Evid. 401, 402;
20 Fed. R. Evid. 701). The first sentence is irrelevant because Courthouse News
21 Service is not requesting that the OCSC identify and promptly publish only
22 “newsworthy” complaints; it is asking that OCSC make all complaints available the
23 same day they are submitted by the filer. Additionally, whether the OCSC can be
24 “expected” to more promptly publish complaints than it currently does is a question
25 on which the witness is not competent to opine, because he is not an operational
26 expert. The witness’s last two, conclusory, sentences are in conflict with his sworn
27 deposition testimony. Mr. Wertheimer testified that OCSC did not consider
28 automated alternatives that other courts use whereby the filer automatically codes

1 the complaint for publication or confidentiality (as on the federal PACER filing
2 system) and that he was not aware of anyone at OCSC anyone pricing out different
3 alternatives to assure faster public access to newly filed complaints. (Wertheimer
4 Depo. 170:1-13, 175:9-15, Exhibit 19 to Fetterly Decl.) Therefore, he lacks any
5 personal knowledge as a foundation to provide an opinion that there is no way for
6 OCSC to comply with these requirements or to comply in a “quicker way.”

7 **RESPONSE TO OBJECTION NO. 15:**

8 CNS’s objections are without merit for the reasons below.

9 OCSC appreciates CNS’s concession that it “is not requesting that the OCSC
10 identify and promptly publish only ‘newsworthy’ complaints; it is asking that
11 OCSC make all complaints available the same day they are submitted by the filer.”
12 This admission renders CNS’s focus on and analyses specific to civil complex
13 cases, ECF No. 83, CNS’s Opposition to OCSC’s Motion for Summary Judgment
14 (“Opp.”), 16:3-24; ECF No. 85, CNS’s Additional Material Facts (“AMF”), ¶¶ 126-
15 141, irrelevant as a matter of fact because CNS seeks equal access to all civil
16 complaints (complex and non-complex alike). CNS’s focus on complex cases,
17 particularly in light of this admission, can only be intended to confuse or mislead
18 the Court.

19 Ms. Wertheimer is not providing a legal opinion; he is simply describing his
20 personal knowledge and experience with respect to the LPS review process. As
21 General Counsel for OCSC, ECF No. 75-4, Wertheimer Decl. ¶ 1, Mr.
22 Wertheimer’s job includes familiarity with the administration of the clerk’s office.
23 Sullivan Decl. ISO Reply ¶ 6, Ex. D, Wertheimer Depo. 41:22-55:21. Further, Ms.
24 Ochoa and Ms. Kruse both declared that LPSs review new complaints in the order
25 received and do not review the substance of a complaint to determine
26 newsworthiness or for any other reason. ECF No. 75-2, Ochoa Decl. ¶ 27; ECF No.
27 75-3, Kruse Decl. ¶ 10. Thus, it naturally follows that LPSs do not and cannot be
28 expected to identify and publish “newsworthy” complaints more promptly than

1 other complaints. Mr. Wertheimer has a direct, personal, and factual basis for
2 making this statement.

3 Mr. Wertheimer's testimony is neither contradictory nor inconsistent with his
4 statement. Mr. Wertheimer's consideration of other court's practices is irrelevant to
5 what he, as General Counsel of OCSC, understands to be OCSC's obligations under
6 California law and the requisite staff to meet these obligations. That federal courts
7 or other state courts may use an automated process is irrelevant to how Mr.
8 Wertheimer believes OCSC, as one of the largest and busiest trial court systems in
9 the nation, can meet the needs of litigants while complying with requisite law.
10 Further, other courts may not have to consider and comply with confidentiality
11 requirements similar to those imposed by California law.

12 Finally, Mr. Wertheimer's familiarity with whether anyone at OCSC is
13 pricing out different alternatives to assure faster public access to newly filed
14 complaints is irrelevant. As an initial matter, just because Mr. Wertheimer is not
15 aware of this does not mean that it is not occurring—indeed he testified that he is
16 not aware, not that it is not happening. And even if this were the case, this does not
17 undermine his position on the need for LPS review of complaints before publication
18 to protect litigant confidentiality under California law. In his opinion, given the
19 legal obligations OCSC must comply with and the budgetary constraints, there is
20 “no quicker” way to publish civil unlimited complaints—95.97% of which are
21 made available within eight business hours.

1 Dated: January 16, 2018

JONES DAY

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3 By: /s/ Robert A. Naeve
4 Robert A. Naeve

5 Attorneys for Defendant
6 DAVID YAMASAKI
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